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Gray and Danforth, J.J., dissenting.

The argument of the majority of the court is, that no one shall be permitted to profit by his own fraud, or take advantage of his wrong; that there was no certainty that the testator would not change his will or even survive the legatee, and that, as the legatee by his crime made the will speak and have operation, if the will is allowed full effect, the legatee will profit by his own wrong. The civil law expressly provides that a legatee who has acted thus shall take none of the testator's property, and our law makers did not insert a similar provision in our statutes, because they thought that the maxims of the common law were sufficient to regulate such a case, and that a specific enactment for that purpose was not needed. The dissenting opinion delivered by Gray, J., contends that this matter is in no sense equitable, but that the court is bound by the statutory provisions as to altering and revoking wills; and since this will has not been revoked according to the statutes, it must have full effect. The reference to the civil law only furnishes an argument for making laws to meet such cases. The demands of public policy are satisfied by the punishment of the crime by the criminal courts, and to take away the legacy would be to impose an additional penalty. *Riggs v. Palmer*, 22 N. E. Rep. 188 (N. Y.).

In other cases where an heir or legatee has been forced by the court to give up some of the benefit which otherwise he would have received by descent, or under the will, the decisions have rested on the ground, that, as the defendant has by his fraud prevented the deceased from doing an act in favor of the plaintiff, the defendant is a constructive trustee of the property so acquired, and holds it for the benefit of the plaintiff. See *Luttrell v. Olmuis*, 11 Ves. 638; *Goss v. Tracy*, 1 P. Wms. 287; *Lester v. Foxcroft*, Colle's Parlia. Cas. 108.

In this case it was not certain that the testator would ever revoke his will, or in whose favor a possible new will would be made. There is therefore no chance for a constructive trust since there is no one who can claim as *cestui*. Cases where the beneficiary of a life-insurance policy murders the assured, and is therefore not allowed to recover the insurance money, are not in point. A policy is a contract, and in order to recover the beneficiary must prove his right under the contract, which he clearly cannot do.

The principle of the case would seem to require that no legatee or heir take the property of a testator whom he has murdered, no matter what motive led him to commit the crime. It is peculiar that such an important principle should have been supported in the past by no cases directly in point. The only other court in which a like state of facts has been passed upon seems to have been in North Carolina (*Owens v. Owens*, 100 N. C. 240, referred to in the opinion of the majority), where the opposite result was reached.

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## REVIEW.

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A BRIEF FOR THE TRIAL OF CRIMINAL CASES. By Austin Abbott, assisted by William C. Beecher, late Assistant District Attorney of the City of New York. New York: Diossy & Co., 1889. 8vo. pp. xvii. 566.

This is the second Brief from the pen of this author. The plan of these books is unique, and it would seem admirably adapted to the purpose. As the title indicates, the whole book is modelled on a brief. Principles are stated in clear, terse language, and in each case followed by a list of authorities. The scope of the work is well indicated by the author in the preface: "My aim has been to present those debatable questions which are now most constantly mooted at the trial, — to carry the exposition of each into sufficient detail to meet all ordinary aspects of the subject, and upon such questions to furnish counsel with the materials for discussion and discrimination, arranged in that concise, analytic form which we all find the most convenient as an aid to

the memory in dealing with questions which may unexpectedly arise in court; a form equally advantageous also in making that thorough preparation for trial that is becoming more and more essential."

The authorities cited for each point are carefully selected from the decisions of the various jurisdictions of this country, with an occasional reference to the English decisions. The points are well sustained by the citations, and the quotations are apt. Occasional comments add to the value of the work. The references to New York decisions are specially numerous, but the book is by no means local.

The arrangement is made throughout with a view to readiness of use as a manual; the various subdivisions are indicated by italics, and authorities, quotations, and comments are all indicated by distinctive type, enabling one at a glance to find principle and authority. It is to be regretted that the value of the headings of the pages has been much impaired by the neglect to select suitable "catch-words" to indicate their contents. "Rules &c." for example, gives little idea that the two hundred or more pages so headed contain rules of evidence; it must be said, however, that this fault is not so marked in the headings of the smaller divisions. Not only is the arrangement of the book admirably adapted to ready reference, but there is a very full table of contents and an excellent index.

On the whole it would seem that Mr. Abbott's work had been very successfully accomplished, and that in the Brief for the trial of Criminal Cases as in the Brief for Civil cases, he has given us an excellent manual.

G. P. F.

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## BOOKS RECEIVED.

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THE AMERICAN DIGEST. (Annual, Vol. 2, 1888.) St. Paul: West Publishing Co., 1889. 8vo. pp. ix, 1538.

THE DEVELOPMENT OF THE CONSTITUTION AS INFLUENCED BY CHIEF JUSTICE MARSHALL. By Henry Hitchcock, LL. D. New York: G. P. Putnam's Sons, 1889. 8vo. pp. 68.

THE PLACE OF THE FEDERAL COURT IN THE AMERICAN CONSTITUTIONAL SYSTEM. By Thomas M. Cooley, LL. D. New York: G. P. Putnam's Sons, 1889. 8vo. pp. 26.

THE ANNUAL INDEX TO PERIODICALS. Bangor: W. M. Griswold, 1889. 8vo. pp. 47.

THE LAW STUDENTS' MONTHLY. Vol. 1, No. 1. George Wharton Pepper, Editor. Philadelphia: T. & J. W. Johnson & Co. pp. 71.

THE LAW OF FEDERAL SUFFRAGE, An argument in support of. By Francis Minor, of the St. Louis Bar. 8vo. pp. 8.